

Part 3

Admission to an Intermediate Care Facility for People with an Intellectual Disability

62A-5-302 Division responsibility.

The division is responsible:

- (1) for the supervision, care, and treatment of persons with an intellectual disability in this state who are committed to the division's jurisdiction under the provisions of this part; and
- (2) to evaluate and determine the most appropriate, least restrictive setting for an individual with an intellectual disability.

Amended by Chapter 366, 2011 General Session

62A-5-304 Limited admission of persons convicted of felony offenses.

A person with an intellectual disability who has been convicted of a felony, or if a minor, of a crime that would constitute a felony if committed by an adult, may not be admitted to an intermediate care facility for people with an intellectual disability unless it is determined by the division, in accordance with the provisions of this part and other state law, that the person may benefit from treatment in that facility.

Amended by Chapter 366, 2011 General Session

62A-5-305 Residency requirements -- Transportation of person to another state.

- (1) A person with an intellectual disability who has a parent or guardian residing in this state may be admitted to an intermediate care facility for people with an intellectual disability in accordance with the provisions of this part.
- (2) If a person with an intellectual disability enters Utah from another state, the division may have that person transported to the home of a relative or friend located outside of this state, or to an appropriate facility in the state where the person with the intellectual disability is domiciled. This section does not prevent a person with an intellectual disability who is temporarily located in this state from being temporarily admitted or committed to an intermediate care facility for people with an intellectual disability in this state.

Amended by Chapter 366, 2011 General Session

62A-5-308 Commitment -- Persons under age 18.

Beginning July 1, 1993, the director of the division or the director's designee, may commit an individual under 18 years of age who has an intellectual disability or symptoms of an intellectual disability, to the division for observation, diagnosis, care, and treatment if that commitment is based on:

- (1) involuntary commitment under the provisions of Section 62A-5-312. Proceedings for involuntary commitment of an individual under 18 years of age may be commenced by filing a written petition with the juvenile court under Section 62A-5-312. The juvenile court has jurisdiction to proceed in the same manner and with the same authority as the district court; or
- (2) an emergency commitment in accordance with the provisions of Section 62A-5-311.

Amended by Chapter 366, 2011 General Session

62A-5-309 Commitment -- Person 18 years or older.

Beginning July 1, 1993, the director or his designee may commit to the division an individual 18 years of age or older who has an intellectual disability, for observation, diagnosis, care, and treatment if that commitment is based on:

- (1) involuntary commitment under the provisions of Section 62A-5-312; or
- (2) temporary emergency commitment under the provisions of Section 62A-5-311.

Amended by Chapter 366, 2011 General Session

62A-5-310 Involuntary commitment.

An individual may not be involuntarily committed to an intermediate care facility for people with an intellectual disability except in accordance with Sections 62A-5-311 and 62A-5-312.

Amended by Chapter 366, 2011 General Session

62A-5-311 Temporary emergency commitment -- Observation and evaluation.

- (1) The director of the division or his designee may temporarily commit an individual to the division and therefore, as a matter of course, to an intermediate care facility for people with an intellectual disability for observation and evaluation upon:
 - (a) written application by a responsible person who has reason to know that the individual is in need of commitment, stating:
 - (i) a belief that the individual has an intellectual disability and is likely to cause serious injury to self or others if not immediately committed;
 - (ii) personal knowledge of the individual's condition; and
 - (iii) the circumstances supporting that belief; or
 - (b) certification by a licensed physician or designated intellectual disability professional stating that the physician or designated intellectual disability professional:
 - (i) has examined the individual within a three-day period immediately preceding the certification; and
 - (ii) is of the opinion that the individual has an intellectual disability, and that because of the individual's intellectual disability is likely to injure self or others if not immediately committed.
- (2) If the individual in need of commitment is not placed in the custody of the director or the director's designee by the person submitting the application, the director's or the director's designee may certify, either in writing or orally that the individual is in need of immediate commitment to prevent injury to self or others.
- (3) Upon receipt of the application required by Subsection (1)(a) and the certifications required by Subsections (1)(b) and (2), a peace officer may take the individual named in the application and certificates into custody, and may transport the individual to a designated intermediate care facility for people with an intellectual disability.
- (4)
 - (a) An individual committed under this section may be held for a maximum of 24 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time, the individual shall be released unless proceedings for involuntary commitment have been commenced under Section 62A-5-312.
 - (b) After proceedings for involuntary commitment have been commenced the individual shall be released unless an order of detention is issued in accordance with Section 62A-5-312.
- (5) If an individual is committed to the division under this section on the application of any person other than the individual's legal guardian, spouse, parent, or next of kin, the director or his

designee shall immediately give notice of the commitment to the individual's legal guardian, spouse, parent, or next of kin, if known.

Amended by Chapter 366, 2011 General Session

62A-5-312 Involuntary commitment -- Procedures -- Necessary findings -- Periodic review.

- (1) Any responsible person who has reason to know that an individual is in need of commitment, who has a belief that the individual has an intellectual disability, and who has personal knowledge of the conditions and circumstances supporting that belief, may commence proceedings for involuntary commitment by filing a written petition with the district court, or if the subject of the petition is less than 18 years of age with the juvenile court, of the county in which the individual to be committed is physically located at the time the petition is filed. The application shall be accompanied by:
 - (a) a certificate of a licensed physician or a designated intellectual disability professional, stating that within a seven-day period immediately preceding the certification, the physician or designated intellectual disability professional examined the individual and believes that the individual has an intellectual disability and is in need of involuntary commitment; or
 - (b) a written statement by the petitioner that:
 - (i) states that the individual was requested to, but refused to, submit to an examination for an intellectual disability by a licensed physician or designated intellectual disability professional, and that the individual refuses to voluntarily go to the division or an intermediate care facility for people with an intellectual disability recommended by the division for treatment;
 - (ii) is under oath; and
 - (iii) sets forth the facts on which the statement is based.
- (2) Before issuing a detention order, the court may require the petitioner to consult with personnel at the division or at an intermediate care facility for people with an intellectual disability and may direct a designated intellectual disability professional to interview the petitioner and the individual to be committed, to determine the existing facts, and to report them to the court.
- (3) The court may issue a detention order and may direct a peace officer to immediately take the individual to an intermediate care facility for people with an intellectual disability to be detained for purposes of an examination if the court finds from the petition, from other statements under oath, or from reports of physicians or designated intellectual disability professionals that there is a reasonable basis to believe that the individual to be committed:
 - (a) poses an immediate danger of physical injury to self or others;
 - (b) requires involuntary commitment pending examination and hearing;
 - (c) the individual was requested but refused to submit to an examination by a licensed physician or designated intellectual disability professional; or
 - (d) the individual refused to voluntarily go to the division or to an intermediate care facility for people with an intellectual disability recommended by the division.
- (4)
 - (a) If the court issues a detention order based on an application that did not include a certification by a designated intellectual disability professional or physician in accordance with Subsection (1)(a), the director or his designee shall within 24 hours after issuance of the detention order, excluding Saturdays, Sundays, and legal holidays, examine the individual, report the results of the examination to the court and inform the court:
 - (i) whether the director or his designee believes that the individual has an intellectual disability; and

- (ii) whether appropriate treatment programs are available and will be used by the individual without court proceedings.
- (b) If the report of the director or his designee is based on an oral report of the examiner, the examiner shall immediately send the results of the examination in writing to the clerk of the court.
- (5) Immediately after an individual is involuntarily committed under a detention order or under Section 62A-5-311, the director or his designee shall inform the individual, orally and in writing, of his right to communicate with an attorney. If an individual desires to communicate with an attorney, the director or his designee shall take immediate steps to assist the individual in contacting and communicating with an attorney.
- (6)
 - (a) Immediately after commencement of proceedings for involuntary commitment, the court shall give notice of commencement of the proceedings to:
 - (i) the individual to be committed;
 - (ii) the applicant;
 - (iii) any legal guardian of the individual;
 - (iv) adult members of the individual's immediate family;
 - (v) legal counsel of the individual to be committed, if any;
 - (vi) the division; and
 - (vii) any other person to whom the individual requests, or the court designates, notice to be given.
 - (b) If an individual cannot or refuses to disclose the identity of persons to be notified, the extent of notice shall be determined by the court.
- (7) That notice shall:
 - (a) set forth the allegations of the petition and all supporting facts;
 - (b) be accompanied by a copy of any detention order issued under Subsection (3); and
 - (c) state that a hearing will be held within the time provided by law, and give the time and place for that hearing.
- (8) The court may transfer the case and the custody of the individual to be committed to any other district court within the state, if:
 - (a) there are no appropriate facilities for persons with an intellectual disability within the judicial district; and
 - (b) the transfer will not be adverse to the interests of the individual.
- (9)
 - (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, after any order or commitment under a detention order, the court shall appoint two designated intellectual disability professionals to examine the individual. If requested by the individual's counsel, the court shall appoint a reasonably available, qualified person designated by counsel to be one of the examining designated intellectual disability professionals. The examinations shall be conducted:
 - (i) separately;
 - (ii) at the home of the individual to be committed, a hospital, an intermediate care facility for people with an intellectual disability, or any other suitable place not likely to have a harmful effect on the individual; and
 - (iii) within a reasonable period of time after appointment of the examiners by the court.
 - (b) The court shall set a time for a hearing to be held within 10 court days of the appointment of the examiners. However, the court may immediately terminate the proceedings and dismiss

the application if, prior to the hearing date, the examiners, the director, or his designee informs the court that:

- (i) the individual does not have an intellectual disability; or
- (ii) treatment programs are available and will be used by the individual without court proceedings.

(10)

- (a) Each individual has the right to be represented by counsel at the commitment hearing and in all preliminary proceedings. If neither the individual nor others provide counsel, the court shall appoint counsel and allow sufficient time for counsel to consult with the individual prior to any hearing.
- (b) If the individual is indigent, the county in which the individual was physically located when taken into custody shall pay reasonable attorney fees as determined by the court.

(11) The division or a designated intellectual disability professional in charge of the individual's care shall provide all documented information on the individual to be committed and to the court at the time of the hearing. The individual's attorney shall have access to all documented information on the individual at the time of and prior to the hearing.

(12)

- (a) The court shall provide an opportunity to the individual, the petitioner, and all other persons to whom notice is required to be given to appear at the hearing, to testify, and to present and cross-examine witnesses.
- (b) The court may, in its discretion:
 - (i) receive the testimony of any other person;
 - (ii) allow a waiver of the right to appear only for good cause shown;
 - (iii) exclude from the hearing all persons not necessary to conduct the proceedings; and
 - (iv) upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiner.
- (c) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the individual. The Utah Rules of Evidence apply, and the hearing shall be a matter of court record. A verbatim record of the proceedings shall be maintained.

(13) The court may order commitment if, upon completion of the hearing and consideration of the record, it finds by clear and convincing evidence that all of the following conditions are met:

- (a) the individual to be committed has an intellectual disability;
- (b) because of the individual's intellectual disability one or more of the following conditions exist:
 - (i) the individual poses an immediate danger of physical injury to self or others;
 - (ii) the individual lacks the capacity to provide the basic necessities of life, such as food, clothing, or shelter; or
 - (iii) the individual is in immediate need of habilitation, rehabilitation, care, or treatment to minimize the effects of the condition which poses a threat of serious physical or psychological injury to the individual, and the individual lacks the capacity to engage in a rational decision-making process concerning the need for habilitation, rehabilitation, care, or treatment, as evidenced by an inability to weigh the possible costs and benefits of the care or treatment and the alternatives to it;
- (c) there is no appropriate, less restrictive alternative reasonably available; and
- (d) the division or the intermediate care facility for people with an intellectual disability recommended by the division in which the individual is to be committed can provide the individual with treatment, care, habilitation, or rehabilitation that is adequate and appropriate to the individual's condition and needs.

- (14) In the absence of any of the required findings by the court, described in Subsection (13), the court shall dismiss the proceedings.
- (15)
- (a) The order of commitment shall designate the period for which the individual will be committed. An initial commitment may not exceed six months. Before the end of the initial commitment period, the administrator of the intermediate care facility for people with an intellectual disability shall commence a review hearing on behalf of the individual.
 - (b) At the conclusion of the review hearing, the court may issue an order of commitment for up to a one-year period.
- (16) An individual committed under this part has the right to a rehearing, upon filing a petition with the court within 30 days after entry of the court's order. If the petition for rehearing alleges error or mistake in the court's findings, the court shall appoint one impartial licensed physician and two impartial designated intellectual disability professionals who have not previously been involved in the case to examine the individual. The rehearing shall, in all other respects, be conducted in accordance with this part.
- (17)
- (a) The court shall maintain a current list of all individuals under its orders of commitment. That list shall be reviewed in order to determine those patients who have been under an order of commitment for the designated period.
 - (b) At least two weeks prior to the expiration of the designated period of any commitment order still in effect, the court that entered the original order shall inform the director of the division of the impending expiration of the designated commitment period.
 - (c) The staff of the division shall immediately:
 - (i) reexamine the reasons upon which the order of commitment was based and report the results of the examination to the court;
 - (ii) discharge the resident from involuntary commitment if the conditions justifying commitment no longer exist; and
 - (iii) immediately inform the court of any discharge.
 - (d) If the director of the division reports to the court that the conditions justifying commitment no longer exist, and the administrator of the intermediate care facility for people with an intellectual disability does not discharge the individual at the end of the designated period, the court shall order the immediate discharge of the individual, unless involuntary commitment proceedings are again commenced in accordance with this section.
 - (e) If the director of the division, or the director's designee reports to the court that the conditions designated in Subsection (13) still exist, the court may extend the commitment order for up to one year. At the end of any extension, the individual must be reexamined in accordance with this section, or discharged.
- (18) When a resident is discharged under this subsection, the division shall provide any further support services available and required to meet the resident's needs.

Amended by Chapter 366, 2011 General Session

62A-5-313 Transfer -- Procedures.

- (1) The director of the division, or the director's designee, may place an involuntarily committed resident in appropriate care or treatment outside the intermediate care facility for people with an intellectual disability. During that placement, the order of commitment shall remain in effect, until the resident is discharged or the order is terminated.

- (2) If the resident, or the resident's parent or guardian, objects to a proposed placement under this section, the resident may appeal the decision to the executive director or the executive director's designee. Those appeals shall be conducted in accordance with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act. If an objection is made, the proposed placement may not take effect until the committee holds that hearing and the executive director makes a final decision on the placement.

Amended by Chapter 366, 2011 General Session

62A-5-315 Petition for reexamination.

- (1) A resident committed under Section 62A-5-312, or his parent, spouse, legal guardian, relative, or attorney, may file a petition for reexamination with the district court of the county in which the resident is domiciled or detained.
- (2) Upon receipt of that petition, the court shall conduct proceedings under Section 62A-5-312.

Amended by Chapter 114, 2004 General Session

62A-5-316 Temporary detention.

Pending removal to an intermediate care facility for people with an intellectual disability, an individual taken into custody or ordered to be committed under this part may be detained in the individual's home, or in some other suitable facility. The individual shall not, however, be detained in a nonmedical facility used for detention of individuals charged with or convicted of penal offenses, except in a situation of extreme emergency. The division shall take reasonable measures, as may be necessary, to assure proper care of an individual temporarily detained under this part.

Amended by Chapter 366, 2011 General Session

62A-5-317 Authority to transfer resident.

- (1) The administrator of an intermediate care facility for people with an intellectual disability, or the administrator's designee, may transfer or authorize the transfer of a resident to another intermediate care facility for people with an intellectual disability if, before the transfer, the administrator conducts a careful evaluation of the resident and the resident's treatment needs, and determines that a transfer would be in the best interest of that resident. If a resident is transferred, the administrator shall give immediate notice of the transfer to the resident's spouse, guardian, parent, or advocate or, if none of those persons are known, to the resident's nearest known relative.
- (2) If a resident, or the resident's parent or guardian, objects to a proposed transfer under this section, the administrator shall conduct a hearing on the objection before a committee composed of persons selected by the administrator. That committee shall hear all evidence and make a recommendation to the administrator concerning the proposed transfer. The transfer may not take effect until the committee holds that hearing and the administrator renders a final decision on the proposed transfer.

Amended by Chapter 366, 2011 General Session

62A-5-318 Involuntary treatment with medication -- Committee -- Findings.

- (1) If, after commitment, a resident elects to refuse treatment with medication, the director, the administrator of the intermediate care facility for people with an intellectual disability, or a designee, shall submit documentation regarding the resident's proposed treatment to a committee composed of:
 - (a) a licensed physician experienced in treating persons with an intellectual disability, who is not directly involved in the resident's treatment or diagnosis, and who is not biased toward any one facility;
 - (b) a psychologist who is a designated intellectual disability professional who is not directly involved in the resident's treatment or diagnosis; and
 - (c) another designated intellectual disability professional of the facility for persons with an intellectual disability, or a designee.
- (2) Based upon the court's finding, under Subsection 62A-5-312(13), that the resident lacks the ability to engage in a rational decision-making process regarding the need for habilitation, rehabilitation, care, or treatment, as demonstrated by evidence of inability to weigh the possible costs and benefits of treatment, the committee may authorize involuntary treatment with medication if it determines that:
 - (a) the proposed treatment is in the medical best interest of the resident, taking into account the possible side effects as well as the potential benefits of the medication; and
 - (b) the proposed treatment is in accordance with prevailing standards of accepted medical practice.
- (3) In making the determination described in Subsection (2), the committee shall consider the resident's general history and present condition, the specific need for medication and its possible side effects, and any previous reaction to the same or comparable medication.
- (4) Any authorization of involuntary treatment under this section shall be periodically reviewed in accordance with rules promulgated by the division.

Amended by Chapter 366, 2011 General Session